
**BEFORE THE
DEPARTMENT OF HOMELAND SECURITY**

**REQUEST FOR COMMENTS CONCERNING
THE PROPOSED
IMPLEMENTATION OF THE NATIONAL MARITIME SECURITY
INITIATIVES; FACILITY SECURITY,
UNDER THE
MARITIME TRANSPORTATION SECURITY ACT OF 2002**

**SUBMISSION
OF
PENNY NEWMAN GRAIN COMPANY, INC.**

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July 31, 2003

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Penny Newman Grain Company, Inc., submits the following written comments in response to the Department of Homeland Security's request announced in the Federal Register on July 1, 2003. 68 Fed Reg. No.126. As requested, this information is provided on the effects of the proposed regulations that would require U.S. port facilities to conduct a Facility Security Assessment, produce a Facility Security Plan, and ensure other security requirements such as but not limited to, designating a Facility Security Officer, training security personnel, and conducting exercise drills.

Penny Newman Grain Company, Inc. was established in 1878 as a mercantile company in Fresno. It has grown to be a successful grain and feed by-product merchandiser in California. It also operates one of the largest dairy feed manufacturing facilities in California. Its port facilities include a single dock facility located at the Port of Stockton. Its port facility exports wheat, rice, safflower, both domestically and internationally. Its facilities also import a wide variety of feed by-products.

Penny Newman Grain Company strongly supports strengthening the security of the country's ports as intended by the Maritime Security Act of 2002. However, the Penny Newman Grain Company is concerned first and foremost with the vague description and definition under section 105.105, Applicability. It states that the proposed regulations apply to facilities that

receive 150 passengers, or facilities that receive vessels subject to the International Convention for Safety of Life at Sea, 1974, or commercial vessels subject to subchapter I of title 46, CFR, greater than 100 gross register tons on international voyages, including vessels solely navigating the Great Lakes. Penny Newman Grain Company's facility receives both international and domestic vessels, some of which are much lighter than the 100 gross register tons, and some of which are at or exceed the requisite tonnage. Thus, it is unclear whether a small facility such as ours, with only one pier, located inland on a river, would be subject to the regulations under section 105. The Penny Newman Grain Company would like to see section 105.105 revised with more detail and also take into account the overall size of ports in determining applicability and/or degree of applicability.

The Penny Newman Grain Company is pleased that the proposed regulations contain an Alternative Security provision as described in section 105.140. A facility such as ours is a perfect example of one that would seem to be compatible with and fit under this provision. Unfortunately, it is unclear whether the Penny Newman Grain Company would qualify under the alternate provisions. Section 105.140 references section 101.120 entitled, "Alternatives," where it outlines who is eligible to apply for this status. That section states, "Owners and operators of vessels and facilities required to have security plans under parts 104, 105, or 106, of this subchapter, other than vessels that engage on international voyages and facilities that serve only vessels on international voyages, may meet an Alternative Security Program that has been reviewed and approved..." This is confusing because what if a facility handles both vessels on international and domestic voyages? As stated before, the Penny Newman Grain Company's facilities handle both international and domestic vessels. From a fair reading, it would seem that so long as PNGC handles at least some vessels that are on domestic voyages, then the Penny Newman Grain Company would be eligible to apply for Alternative Security Program status. The Penny Newman Grain Company would like the new regulations to further clarify who is eligible and what standards the DHS will use when evaluating candidates for the Alternative Security Program. In developing a new definition, the Penny Newman Grain Company would like to see the size of a facility as one of the factors.

Similarly, the Penny Newman Grain Company is pleased that a waiver provision is included in the proposed regulations, under section 105.130. Again, the Penny Newman Grain Company feels that a facility such as ours would be a perfect candidate for waiver status under the provisions section 105. The Penny Newman Grain Company would like to see this section with a more elaborate description as to what factors and standards the Commandment will focus on when evaluating applications for waivers.

The Penny Newman Grain Company is concerned about the proposed date of December 29, 2003, when a facility owner must submit a Facility Security Plan. This is unreasonable considering that the final regulations will be released by November 25, 2003. As stated before, the Penny Newman Grain Company will likely seek alternative status, as well as waivers from some of the provisions. If the final regulations are not released until the last possible date, it would not be possible for the Penny Newman Grain Company implement a Facility Security Plan, since it would be waiting to hear whether it would qualify under the Alternative Security Program and/or waiver status. If rejected for both the alternative and waiver provisions, the Penny Newman Grain Company would have to start over and come up with a new FSP by December 29, 2003. This would be impossible to accomplish.

Under section 105.200(b)(7), Facility Security Requirements, the owner/operator must ensure coordination of shore leave for vessel personnel crew change-out as well as access through the facility for visitors to the vessel. This would place our owner/operator in a difficult position of having to manage employees (seamen) who have no direct relationship to the Penny Newman Grain Company. It is one thing for Penny Newman Grain Company to ask for identification from a seaman, but quite another to tell them when they can and cannot get off the vessel. Many of the seamen working on the vessels that go in and out of our port have labor contracts with their requisite employers. Thus, by being placed in a position where our owner has to manage these employees, the Penny Newman Grain Company is at risk of interfering with other parties' labor agreements. Again, this proposed regulation is cumbersome in that it puts Penny Newman Grain Company in the position of managing employees with which it has no direct relationship.

Under the summary of section 105, it states that small entities such as ours will have to endure costs between \$742,700 - \$1,942,500, in order to comply with the proposed regulations. For an entity such as ours, this poses a significant economic burden. Thus, Penny Newman Grain Company urges the DHS to make available grants for small entities to enable them to either upgrade its physical structure, install more technologically advanced equipment and similar items. At the very least the Department of Homeland Security should publish information concerning existing grant programs that would assist small entities to comply with the burdensome regulations. This sort of action would be consistent with the Coast Guards' July 1, 2003 press release that mentions that \$170 million in grants were made available for ports. Unfortunately, the proposed regulations do not provide exact information on where an entity such as the Penny Newman Grain Company can seek this funding. The final regulations should cross reference programs that offer grants and assistance.

If you would like any additional information or have any questions, please advise and additional information will be furnished.

Respectfully submitted,

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